IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1157 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVARLAL U MODI

Versus

AHMEDABAD DIST. CO-OP MILK PRODUCERS UNION LTD

Appearance:

1. Special Civil Application No. 1157 of 1991

MR DC RAWAL FOR MR MR ANAND for Petitioner No. 1

MR KB NAIK FOR MR BB NAIK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/09/2004

ORAL JUDGEMENT

Heard Mr.D.C.Rawal, learned advocate on behalf of the petitioner and Mr.K.B.Naik, learned advocate for respondent.

2. In the present petition, the petitioner has challenged the order passed by the Labour Court, Ahmedabad in Recovery Application No.494 of 1987 dated 11th July, 1990 whereby the recovery application filed by the petitioner has been rejected by the labour court. The Labour Court has come to the conclusion that looking to the facts and circumstances and evidence on record, the petitioner is entitled to salary of the Manager but for that he should approach appropriate authority under the law and recovery application under Section 33[C][2] is not maintainable because the petitioner is not "workman" within the purview of Section 2[s] of the Industrial Disputes Act, 1947. The substance is that claim of the petitioner was accepted by the labour court and endorsed the claim to be just and proper and legally he is entitled but the forum should be different and that is why, application has been rejected.

3. Mr.D.C.Rawal, learned advocate for the petitioner has submitted that mere designation of Manager is not enough to exclude the petitioner from the definition of `workman' under Section 2[s] of the Industrial Disputes Act. From the facts emerges from record, it transpires that one Shri S.R.Joshi, Manager tendered resignation in August, 1982 and in his place the present petitioner was appointed as officiating Manager. Therefore, he was entitled to salary of the Manager which was paid to said Shri S.R.Joshi by the respondent. Mr.Rawal submitted that looking to the definition of `workman' under Section 2[s] of the I.D.Act, 1947, the case of the petitioner is squarely covered on both the grounds, firstly that his salary was below Rs.1600/- and therefore, he was covered by definition and secondly, the nature of work not disclosed by the respondent before the labour court and therefore, whether the nature of duties attached to the office or by person of the powers vested in him, functions mainly of a managerial nature or not. That no such evidence was on record and therefore, in absence of such evidence, the labour court has committed gross error in not accepting the recovery application filed by the petitioner. He also submitted that preliminary point raised by the respondent that the petitioner is not a workman and therefore, the recovery application is not maintainable. Therefore, it is the duty of the respondent to prove the facts before the labour court that the petitioner does not fall within definition of "workman" by leading proper evidence as to managerial duties and functions mainly of managerial nature. Therefore, since no such evidence was led by the respondent before the labour court, gross error committed

by the labour court in rejecting the recovery application only on technical ground. He relied upon decision of this Court in case of Vallabhbhai Kalyanbhai Sutariya v. Division Controller of G.S.R.T.C., 1993 [2] GLR 1159. Relying upon the said decision, it is contended that pursuant to Industrial Disputes [Gujarat Amendment] Act, 1981, limit of Rs.1000/- specified under Section 2[s][iv] of the Act was raised upto Rs.1600/-. This amendment came into force from 1st August, 1981. Relying on the aforesaid decision, it is contended that in the present case, said Shri S.R.Joshi, Manager had tendered resignation in August, 1982 and therefore, salary of the petitioner was upto Rs.1600/- and as a result thereof he was covered under the definition of workman under Section 2[s] of the I.D.Act. Mr.Rawal, learned advocate, therefore, submits that the labour court has simply relied upon designation and not considered the duties of the petitioner and hence committed gross error in rejecting the application.

4. Learned advocate Mr.K.B.Naik for the respondent has vehemently opposed submissions made by Mr.Rawal. Mr.Naik submitted that it was undisputed fact between the parties that the petitioner was working at the relevant time as Manager and looking to the definition of the workman, he was not covered by definition of "workman" under S.2[s] of the Act and therefore, the recovery application has been rightly rejected by the labour court. He also submitted that it is the duty of the petitioner to satisfy the Court that he was workman and it is not burden upon the respondent to satisfy otherwise. He read over certain portion of the order before this Court. However, he is not denying the factual aspect that because said Shri Joshi had tendered his resignation in August, 1982, and in his place, the petitioner was appointed as Manager. He also submitted that the labour court has rightly decided the matter and as such, no error has been committed by the labour court while rejecting his application. In short, he submitted that looking to the definition of the "workman" if any employee exercises either by nature of the duties attached to the office or by person of the powers vested in him, functions mainly of a managerial nature, is excluded from the definition of the "workman". Therefore, he submitted that looking to the designation of the petitioner as "Manager", he was exercising the powers vested in him and functions mainly of managerial nature and therefore, recovery application is not maintainable, that is rightly held by the labour court. Except the submissions and contentions recorded above, none other submission made by the learned advocates for

the respective parties and as such, no other citation is pressed into service before this Court.

5. I have considered submissions made by the learned advocates for the respective parties before me. The question is "whether the petitioner while discharging the functions as "Manager" is covered by definition of "workman" under Section 2[s] of the I.D.Act, 1947 ?". It requires to note that it is not clear from the order that which kind of duties were performed by the petitioner while working as officiating Manager. The contention raised by the respondent before the labour court that he is not workman then, burden of the respondent to prove the same by leading proper evidence that the petitioner's main functions of managerial nature and exercises powers by nature of the duties attached to the office of manager or by person of the powers vested in him functions mainly of a managerial nature. No such clear evidence has been led by the respondent before the labour court. It is settled position of law on this point that merely designation is not enough while examining the question whether the particular employee is covered by definition of the workman and for that, mainly nature of duties is very important and relevant. In this case, there is no discussion about the duties discharged and powers exercised by the petitioner while working as the Manager. The labour court has not discussed this aspect and merely relied upon designation and come to the conclusion that the petitioner is not workman but in my opinion, the conclusion of the labour court is erroneous and the same is contrary to the law. Definition of "workman" in Section 2[s] of the Act is very clear which is reproduced as under;

> "Workman" means any person [including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment had led to that dispute , but does not included any such person :-
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> [i] and [ii] xx xx xx xx
>
> [iii] who is employed mainly in managerial or

administrative capacity; or

[iv] Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by person of the powers vested in him, functions mainly of a managerial nature."

6. In such circumstances, it was the duty upon the respondent to prove the facts before the lower Court when contention raised by them that by exercising either by nature of duties attached to the office or by person of the powers vested in him, functions attended and discharged by him were mainly of managerial nature. No such evidence on record was produced by the respondent. Therefore, in absence of documentary and oral evidence, in my opinion, the conclusion of the labour court is contrary to the record. It is also important to note that the respondent has not issued appointment order in favour of the petitioner when Mr.Joshi tendered resignation in August, 1982 specifying his duties and in which post he is to work as the Manager. Whether the petitioner having powers to appoint any employee or to impose punishment on any employee or any other managerial nature of power are with the petitioner or not, does not become clear from the record came before the labour court. Therefore, considering all these facts, according to my opinion, the labour court has committed gross error in relying upon mere designation of the employee as Manager and excluded the duties attached to the post whether he was performing the functions mainly of managerial nature or not. The labour court has totally ignored this important aspect of the matte and for that, there is nothing on record produced by the respondent and therefore, merely considering the designation of the petitioner, recovery application has been rejected which is contrary to the law and therefore, the order in question is required to be quashed and set aside.

7. In this respect, a decision rendered by the Punjab and Haryana High Court in case of SANJEEV KUMAR GUPTA V. PRESIDING OFFICER, LABOUR COURT, FARIDABAD AND ANOTHER, 2001 Lab.I.C. 751, can be referred to, wherein the Division Bench [S.S.Sudhalkar and Mehtab S. Gill, JJ.] observed that Industrial Disputes Act, Section 2[5], workman who is redesignated as Account Executive, evidence showing that petitioner was preparing vouchers / details of the cheques and had no managerial / administrative powers, he is a workman covered under S.2[s], further adjudging nature of work from allowances

a person is getting, is not proper.

The Labour court has totally ignored the functions or the duties attached to the post of Manager which are required to be performed by the petitioner. The respondent has, in terms, submitted in the written submissions at Exh. 27 which is referred to in para 8 of the order that the petitioner was not regularly appointed on the post of Manager and no right to the post of Manager has been extended in favour of the petitioner, meaning thereby, the petitioner was merely handling the work of manager temporarily or officiating and he was not appointed on the post of manager permanently. Though this aspect was admitted by the respondent in the written submissions submitted vide Exh. 27, same was ignored by the labour court. Therefore, there are contradictory findings given by the labour court which are also contrary to the record. The real test as to whether the petitioner is a workman or not within the meaning of section 2(s) of the ID Act, 1947 is the main or substantial work for which he has been employed and engaged and not neither his designation nor any inciental work done or required to be done by him are relative. This view was taken by the Bombay High Court in GM Pillai versus Third Labour Court [1998-2-LLJ pg. 44]. Similarly, the apex court has, in case of SK Maini versus Carona Shahu [1994 (3) SCC pg. 510], also considered that in order to determine whether an employee charged with multifarious duties is or is not a workman, nature of his duties and not his designation is important. In such case, main duties of and not the same work incidentally done by such an employee are decisive. Designation given to an employee is not conclusive to bring him within the definition of workman given in section 2(s) of the ID Act nor he becomes workman if he does some manual or clerical work not ancillary or incidental to such an employment. The main feature, pith and substance of his employment must be manual or clerical before the definition is attracted, Malbar Industrial Co. v. Industrial Tribunal, Trivendrum [AIR 1958 Kerala pg. 202. The apex court has considered the case of Manager working in a hotel who had to write ledgers, file correspondence, enter cash book etc., held to be the workman in case of Indian Iron and Steel CO. Ltd. versus Workman reported in AIR 1958 SC 130. Therefore, considering the ratio of the aforesaid decisions in light of the facts of the present case wherein the respondent has raised contention vide Exh. 10 in reply that the petitioner was working as a Manager and, therefore, he is not a workman within the meaning of section 2(s) of the ID Act, 1947, the labour court has

committed an error in not considering this aspect of the matter. One witness for the respondent namely Shri Prabhatbhai K. Desai was examined at Exh. 25 and except him, no other witness was examined on behalf of the respondent. Said witness for the respondent has not given any details about the duties and functions required to be performed by the petitioner. It was admitted by the said witness that the petitioner was appointed temporarily or officiating Manager in place of Mr. Joshi who had tendered resignation. Therefore, it was not disclosed by the respondent as to what were the duties and functions of the post of Manager, no material to that effect was brought on record by the respondent before the labour court and that was not proved by the respondent before the labour court. Therefore, entire case was considered and decided by the labour court only on the ground that the petitioner was appointed temporarily/officiating Manager in place of Mr. Joshi who had tendered resignation, therefore, it is clear case of error committed by the labour court which is apparent on the face of the record that the labour court has rejected the matter by considering mere designation of the petitioner and not considering the duties and functions attached to the post of Manager or which are required to be performed by the petitioner. From the record, it is clear that the labour court has not at all considered as to whether the functions and duties performed or required to be performed by the petitioner were managerial in nature or not. Since the respondent has not proved it before the labour court that the functions and duties performed or required to be performed by the petitioner were managerial in nature and since it was admitted by the respondents as per their reply and the written submissions that the petitioner was appointed temporarily and officiating as a Manager, the labour court ought to have considered that the petitioner was workman as defined under section 2(s) of the ID Act, 1947.

Whether the concerned persons is a workman or not within the meaning of section 2(s) of the ID Act or a person working with the employer satisfying the requirement of workman or not, is a question of fact but to find out the question of fact, it is necessary to have some evidence to that effect on record. In this case, no such facts are on record. No evidence was led by the respondent before the labour court to prove that the functions discharged and duties performed by the petitioner were managerial in nature and no cross examination was made by the respondent on that aspect. In this back ground, the apex court has considered the

case of a Security Inspector who is held to be workman looking to the duties attached to the post and performed by him in Ved Prakash v. M/s. Delton Cable India (P) Ltd. [AIR 1984 SC 914]. In para 12 of the said judgment, the apex court observed as under:

"12. A Perusal of the evidence of WW-1 and MW-1 regarding the nature of the duties performed by the appellant shows that the substantial part of the work of the appellant consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to watch towers or around the factory or to accompany visitors to the factory and making entries in the visitors' register as regards the visitors and in the concerned registers as regards materials entering or going out of the premises of the factory. It must be noted that MW-1 has admitted in his evidence that there is nothing in writing to show what duties are to be carried out by the appellant. Placed in such a situation, the appellant might have been doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch cells etc. to his subordinate watchmen, which can be got from the stores even under the signatures of watchman and filling up application forms of other workmen and countersigning them or recommending advances and loans or for promotion of his subordinates. It must also be remembered that evidence of both WW1 and MW1 shows that the appellant could never appoint or dismiss any workman or order any inquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only of a security inspector at the gate of the factory premises and that it was neither managerial or supervisory in nature in the sense in which those terms are understood in industrial law. In light of the evidence and the legal position referred to above, we are of the opinion that the findings of the labour court that the appellant is not a workman within the meaning of section 2(s) of the Act is perverse and could not be supported. On the evidence available on record, we hold that the appellant clearly falls within the definition of a 'workman' in Section 2 (s) of the Act and that the reference of the dispute under section 10 (i) (c) of the Act is valid in law."

8. In view of above discussion, present petition succeeds. Consequently, the order passed by the labour court in Recovery Application No.494 / 87 dated 11th July, 1990 is hereby quashed and set aside. Looking to the undisputed facts as observed by the labour court to the effect that looking to the facts and circumstances of the case and evidence on record, the petitioner is entitled to salary of the post of Manager but for that, he should approach the appropriate authority. Therefore, on this ground as well as considering two orders passed by the respondent dated 8th September, 1984, so also, the resolution dated 8.9.1984 passed by the Board of Directors wherein also, it was mentioned that the petitioner is entitled to salary of the post of Manager. Therefore, it is directed to the respondents to pay Rs.40,300/- Rupees forty thousand three hundred only as claimed by the petitioner within period of two months from the date of receipt of copy of this order.

Rule is made absolute accordingly. No order as to costs.

Date : 20.9.2004 [H.K.Rathod, J.]

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